

Internal Revenue Service

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Washington, DC 20224

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PLR-128793-09

Date:
July 01, 2009

Legend

Taxpayer =

Date 1 =

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Dear :

This letter responds to your June 9, 2009, request for rulings as to the federal income tax consequences of a proposed transaction. The information received in that request and in subsequent correspondence is summarized below.

The rulings contained in this letter are based upon facts and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. This office has not verified any of the materials submitted in support of the request for rulings. Verification of the information, representations, and other data may be required as part of the audit process.

Summary of Facts

Taxpayer is an accrual basis corporation that elected to be treated as a real estate investment trust ("REIT") for federal income tax purposes. Taxpayer represents that it qualifies as a REIT under the Internal Revenue Code (the "Code"), that it intends to maintain such qualification as a REIT, and that it regularly distributes its earnings and profits as required under § 857.

Taxpayer has outstanding one class of common stock (the “Common Stock”), which is not traded on any established securities market, and preferred stock. Subject to the approval of its board of directors, Taxpayer intends to make a “spillback” dividend pursuant to § 858(a) with respect to its taxable year ending Date 1 (the “Special Dividend”). Common Stock shareholders will have the right to elect to receive the Special Dividend in cash or stock of equivalent value, as described below.

Taxpayer expects to declare the Special Dividend using the following election mechanism:

Each Common Stock shareholder may elect to receive its dividend in the form of: (a) 100% cash (the “Cash Alternative”) or (b) 100% Common Stock (the “Stock Alternative”), subject to adjustment as described below, by the election deadline. If a stockholder fails to make a valid election by the election deadline, that stockholder will be deemed to have made an election to be determined by Taxpayer at Taxpayer’s sole discretion. The total amount of cash payable in a Special Dividend will be limited to an amount equal to approximately 20 percent of the Special Dividend.

The calculation of the number of shares to be received by any stockholder will be determined, as of a date within a days of the payment of the Special Dividend, based upon a formula utilizing market value that is designed to equate in value the number of shares to be received with the amount of money that could be received instead. The Special Dividend payment date will be as close as reasonably practicable following the end of the valuation period. While each stockholder will have the option to elect to receive cash in lieu of stock for all of the stockholder's entire entitlement under a Special Dividend, Taxpayer will limit the amount of cash to be distributed in the aggregate to approximately 20 percent of the Special Dividend (such amount, the “Cash Limit”). Any cash paid in lieu of fractional shares of Common Stock will not count towards the Cash Limit. In no event will the total amount of cash available be less than 20 percent of the Special Dividend. If the total number of shares of Common Stock with respect to which an election to receive the dividend in cash is made (“Cash Election Shares”) would result in the payment of cash in an aggregate amount that is less than or equal to the Cash Limit, then all holders of Cash Election Shares will receive the Special Dividend on all such shares in cash. If the number of Cash Election Shares would result in the payment of cash in an aggregate amount that is greater than the Cash Limit, then stockholders electing to receive the Special Dividend in cash will receive the Special Dividend on their Cash Election Shares as follows:

(a) a pro rata portion of the available cash; plus

(b) shares of Common Stock in payment of the Special Dividend on each stockholder's remaining Cash Election Shares.

As a result, if too many stockholders elect to receive the Special Dividend in cash, the

stockholder may instead receive a pro rata amount of cash, but in no event less than 20 percent of their entitlement under the Special Dividend.

Rulings

Based solely on the information provided and the representations made, we rule as follows with respect to the Special Dividend: Any and all of the cash and stock distributed in the Special Dividend by Taxpayer will be treated as a distribution of property with respect to its stock to which § 301 applies (§§ 301 and 305(b)). The amount of the distribution of the stock received by any stockholder electing to receive stock will be considered to equal the amount of the money which could have been received instead (§ 1.305-1(b)(2)).

Caveats

We express no opinion about the tax treatment of the proposed transaction under other provisions of the Code and regulations or the tax treatment of any condition existing at the time of, or effects resulting from the proposed transaction that is not specifically covered by the above rulings. In particular, no opinion is expressed with regard to whether Taxpayer qualifies as a REIT under subchapter M of the Code, or whether any of the dividends constitute a preferential dividend under § 562(c). Furthermore, no opinion is expressed as to the reasonableness of taxpayer's stock valuation method.

Procedural Statements

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent. A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling. In accordance with the power of attorney on file with this office, a copy of this letter is being sent to your authorized representatives.

Sincerely,

Richard K. Passales
Senior Counsel, Branch 4
Office of Associate Chief Counsel
(Corporate)